

CONDEMNATION

If landowners refuse BPA's offers to buy land rights (fee or right-of-way easements), BPA would acquire the landrights through condemnation. After a transmission line route has been selected and surveyed, it is usually not possible to use alternative routes to avoid areas where owners are not willing to sell right of way easements for the transmission line or access road right-of-ways, or fee for substations. In some cases, feasible alternative means of access may be found.

If, after good faith negotiations, BPA and a landowner are not able to agree on terms of a purchase, BPA would ask the U. S. Department of Justice to begin condemnation proceedings in U. S. District Court on BPA's behalf. In such cases, the U. S. Attorney files a "declaration of taking" in the court having jurisdiction of the area where the land is located. The declaration of taking describes the location of the fee parcel, or the easement and the uses that the United States will be entitled to make of the property covered by the easement. The Court notifies the landowner and all other parties who have a legal interest in the property that the action has been filed.

The United States owns the easement as soon as the declaration of taking is filed. However, the Government does not have the right to use the property until the Court issues an order delivering possession of the easement to the United States. A judge typically does not sign such an order until the landowner has been notified of the filing and has had a chance to respond. Possession is usually given to an agency promptly after that, but a judge will consider the landowner's response and may schedule a hearing, if requested, before deciding when to deliver possession of property to the agency.

At the time when the declaration of taking is filed, funds are deposited in the registry of the court, in the amount that BPA estimates to be the value of the landrights. This estimate is based on BPA's appraisal. The amount of the deposit is subsequently adjusted, if necessary, to reflect estimated market value at the time when the declaration of taking is filed. While the case is in progress, the landowner can petition the Court to withdraw and use the money that has been deposited by BPA.

The condemnation proceedings determine the value of the landrights taken by the United States. Both sides have an opportunity to present evidence of value, and the Court determines the amount of the ultimate award. If the amount is more than the funds deposited by BPA, the remainder is deposited, with interest from the date when the declaration of taking was filed.

It is sometimes possible for a landowner or his attorney to negotiate a settlement through discussions conducted through the U. S. Attorney after the condemnation proceedings have begun but before a trial. If this occurs, a trial can be avoided.

Each side pays its own litigation costs, unless the award is closer to the landowner's opinion of the value of the landrights than to the Government's. If the amount of the award is closer to the landowner's opinion of value, the Court can have the Government reimburse the landowner for certain costs that he reasonably incurred in the case.

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